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JUN 11 1993

**WJB-TV FT. PIERCE LIMITED PARTNERSHIP**  
8423 US #1  
Port St. Lucie, FL 34985

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

KENNETH E. HALL  
General Manager

June 10, 1993

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JUN 11 1993

FCC - MAIL ROOM

Ms. Donna R. Searcy  
Secretary  
Federal Communication Commission  
1919 M Street, N.W. Room 222  
Washington, D.C. 20554

Re: Petition for Clarification in MM Docket No. 92-265

Dear Ms. Searcy:

Enclosed for filing on behalf of WJB-TV Ft. Pierce Limited Partnership is the original and nine copies of a Petition Clarification in MM Docket No. 92-265.

The Original signed copy of this Petition is being sent to you by Federal Express today.

If you have any questions about this matter, please feel free to call me.

Very truly yours,

WJB-TV Limited Partnership

BY: Kenneth E. Hall  
Kenneth E. Hall  
General Manager

KEH/tkt  
Enclosures  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

Implementation of Sections 12 and 19 )  
of the Cable Television Consumer )  
Protection and Competition Act of 1992 )

Development of Competition and )  
Diversity in Video Programming )

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MM Docket No. 92-265

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after Sunshine's ex parte filing, WJB is still being denied access to Sunshine's programming.

In fact, after the filing of WJB's reply comments and Sunshine's ex parte letter, the two parties negotiated a carriage agreement. At Sunshine's instruction, WJB executed without modification a programming contract provided by Sunshine and returned the contract to Sunshine. WJB purchased new equipment at Sunshine's direction and tested the signal. In anticipation of receiving the programming, WJB printed schedule line-up cards and informed their customers that Sunshine's programming would be provided beginning on April 1, 1993 as the parties had agreed.

of exclusive contracts, it is filing this Petition in anticipation of contrary arguments that could be raised in the future in order to further delay the availability of the programming.

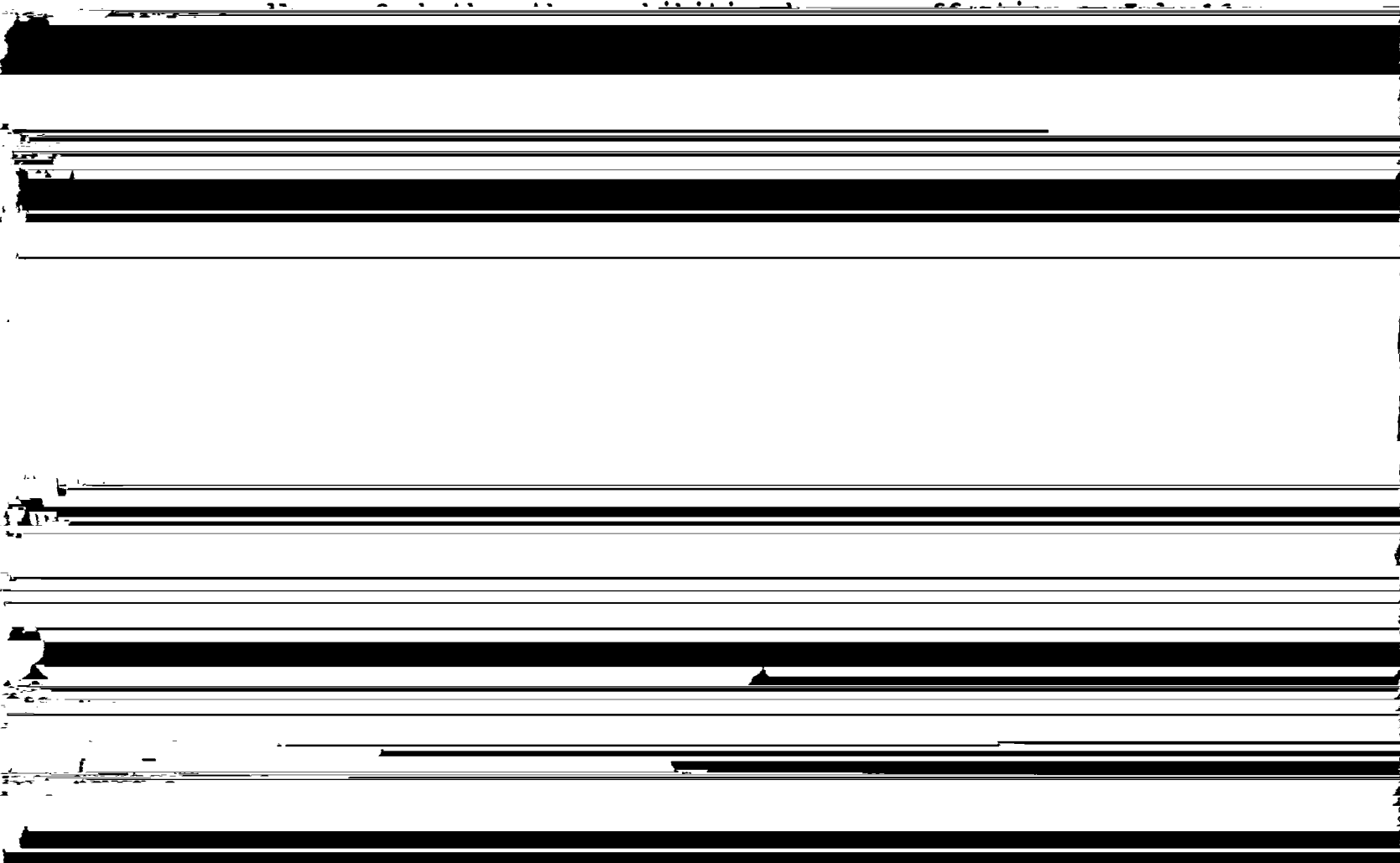
Congress has already determined that exclusive contracts are to be prohibited in virtually all cases. 47 U.S.C. 628(c); First Report and Order at Paragraph 63 ("Congress has clearly placed a higher value on new competitive entry than on the continuation of exclusive distribution practices to impede this entry"). Given this directive, the only remaining question under the rules is when, not whether, the prohibition should commence. And given the conclusions of Congress against exclusive contracts, public policy would dictate that the prohibition against such contracts become effective at the earliest date possible.

The First Report and Order recognizes that Section 628(b), the general prohibition against unfair practices and methods of competition, is intended to be construed broadly and to include the specific activities referenced in Section 628(c). See First Report and Order at Paragraphs 40-41. In other words, an activity enumerated in subsection (c) (such as the use of an exclusive contract) is, by definition, prohibited under subsection (b). Because subsection (b) became effective on December 4, 1992, WJB believes that the continued enforcement of exclusive contracts after that date is prohibited.

The First Report and Order also provides that the regulations adopted in response to Section 628(c) are to become effective on July 16, 1993. First Report and Order at Paragraph

162. At the very least, the prohibition against exclusive contracts under the Commission's rules should become effective on that date. However, WJB is concerned that some vendors may seize upon the language in Paragraph 122 of the First Report and Order, which arguably provides a 120 day period for offenders to bring their contracts into compliance<sup>1</sup>, as an excuse for further delaying the availability of their programming to competing multichannel video distributors. The fear is that these vendors will construe this period as providing yet another reprieve from having to comply with the mandates of the 1992 Cable Act.

There is no reason to delay the effective date of the prohibition throughout the 120 day renegotiation period. During this period, the original parties will presumably be negotiating a new non-exclusive arrangement. These negotiations will occur,



Under the Commission's Rules, WJB believes that beginning on July 16, 1993,<sup>3</sup> all providers should be offered the programming on the same terms given to their competitors in the marketplace. If, during the 120-day renegotiation period, the original parties reach a new agreement, the terms of that agreement should then be offered to all other providers.

The effect of this proposal would be that beginning on July 16, all video providers in a given market would be placed on an even playing field. From that date forward, each would have equal access to programming on equal terms and conditions. Any other course of action would allow for the continuation of the very same tactics that Congress has expressly found to be unfair. Furthermore, such an interpretation would be contrary to one of the primary intentions of Congress in enacting the 1992 Cable Act, that of promoting competition in the video marketplace.

**WJB-TV FT. PIERCE LIMITED PARTNERSHIP**

BY: Kenneth E. Hall  
Kenneth E. Hall  
General Manager

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<sup>3</sup> WJB believes that the underlying statute specifically voids exclusive contracts as of December 4, 1992.

# COLE, RAYWID & BRAVERMAN

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March 10, 1993

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## BY HAND DELIVERY

Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Notification Of Permitted Written Ex Parte  
Presentation -- MM Docket No. 92-265

DO NOT WRITE IN THESE SPACES

COLE, RAYWID & BRAVERMAN

Ms. Donna R. Searcy, Secretary  
March 10, 1993  
Page 2

development of competition and diversity in video programming distribution and carriage. WJB-TV's Reply Comments contain certain misstatements concerning access to the Sunshine Network's programming. Two copies of the letter are attached.

If you have any questions, please contact the undersigned.

Respectfully submitted,

  
Buft A. Braverman

Attachment

cc: Mr. Kenneth E. Hall (w/attachment)  
Mr. Bill Johnson (w/attachment)  
Ms. Alexandra Wilson (w/attachment)  
Ms. Diane Hofbauer (w/attachment)  
Ms. Rosalie Chiara (w/attachment)  
Mr. Jim Coltharp (w/attachment)



COLE, RAYWID & BRAVERMAN

Federal Communications Commission  
March 10, 1993  
Page 3

bcc: David Gluck  
David Almstead

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Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Docket 92-265

Gentlemen:

This letter is submitted on behalf of the Sunshine Network, a Florida joint venture that operates a sports and public affairs cable television network in the state of Florida. The purpose of this letter is to correct a misstatement contained in the reply comments of WJB-TV, Fort Pierce, Ltd. Partnership, operator of a wireless cable system. At page 8, note 5 of its reply comments, WJB stated that "it has been denied access to ... the Sunshine Network, which apparently [is] not offered to any

COLE, RAYWID & BRAVERMAN

Federal Communications Commission  
March 10, 1993  
Page 2

Please place this correspondence in the referenced Docket in order to make the record complete and accurate regarding the Sunshine Network's policy and practice regarding access to its programming.

Very truly yours,

  
Burt A. Braverman  
Attorney for the  
Sunshine Network

cc: Mr. Kenneth E. Hall  
Mr. Bill Johnson  
Ms. Alexandra Wilson  
Ms. Diane Hofbauer  
Ms. Rosalie Chiara  
Mr. Jim Coltharp

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[Footnote Continued]

Cable, a MMDS operator in St. Lucie County, with whom Sunshine Network is currently negotiating an affiliation agreement. Apparently, Coastal Cable is affiliated with WJB-TV. However, Coastal Cable never disclosed that relationship or indicated that it was seeking carriage rights for WJB-TV.

# COLE, RAYWID & BRAVERMAN

ATTORNEYS AT LAW

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March 31, 1993

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COLE, RAYWID & BRAVERMAN

We thank you for your cooperation and patience in this matter.

Sincerely,

*Burt A. Braverman*

Burt A. Braverman

cc: David Gluck, Esquire  
Mr. David Almstead